

## The Nature of War (Mühārebeh)

Mehdi Esmali<sup>1</sup>

### Abstract:

The verse 33 of Ma'deh addresses criminalization of war (Mühārebeh) and corruption on earth (Efsad-fel-Arz), but has not provided any definition of such terms. Some jurists consider such terms as one and the same while there are others who differentiate them. Indications relevant to addictions to murder, igniting homes, witching, etc. all show that corruption on earth signifies a vast meaning and Mühārebeh is one signification of that. In addition, in definition components of Mühārebeh among jurists, there exists disagreement. Some jurists consider masculinity in its accomplishment, whereas others do not hold such a view. Groups of scholars suppose the necessary requirement of evils (Ahl-e-Ribeh), but others do not consider that requirement. Concerning weapons, crucifixion method, denial on earth, etc. there exists disparity of opinions. The study attempts to analyze the nature of Mühārebeh due to the fact that criminalization of Mühārebeh in Article 183 of Islamic Penal Law is of practical use in terms of concepts and instances. Additionally, it is attempted to synchronize the views among Imamiyeh and public jurists.

**Key Words:** Mühārebeh, Corruption on Earth (Efsad-fel-Arz), Evils (Ahl-e-Ribeh), Weapons, Denial on Earth

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## **A Survey between Falsehood and Forbiddance**

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### **Abstract**

One the important issues of jurisprudence is the issue of withholding judgment and religious restraining order. Therefore, each of these orders are of different types. Studying these orders and their types and also answering the question of what task these withholding judgment and religious restraining order bring on the people is considered very necessary and important. One of the important points in Islamic schools is answering whether there is an implication between the forbiddance and the falsehood (as a withholding judgment) and the falsehood (as a religious restraining order) or not. Since forbidding is considered forbiddance in lack of any opposite case, in this study it must be answered whether forbidding as it makes constraints on its object including the worships and transactions) causes the corruption and the falsehood too or not. The great Islamic scholars believe that forbidding in worships shows the falsehood of it but in the domain of transactions there is contradictions among the scholars. Therefore, this study is to answer it through the analytic and descriptive method.

**Keywords:** Forbidding, Corruption, Forbiddance, Falsehood

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# **Determinism and Debility (Wahn) Reputation to Preceding Lawyers**

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## **Abstract**

Determinism and traditional documentary-brokerage debility (Wahn) currently signify a special attribute, and in inference it is unique. However, the attitudes of ancients themselves concerning that attribute and evaluation of its reliability was determinant. In research and re-reading of works related to the issue, it was found out that the deterministic and debility reputation among the believers to certainties to solitude news was argumentative from the preceding lawyers. There exist some who embarked on its absolute falsification or verification, while others addressed them in detail and determinism and debility among them was free from any reputation. The justifiable reasoning concerning determinism and debility either generally or specifically relates to the verse Naba' and its acceptance by 'ibn Honzalah – with conditional accomplishment, realization of strong suspicion from the famous, reputation in assertion of some probable event. The scrutiny on these documentations verifies its lack of integrity and attaching lack of reasoning to this effect debilizes determinism and debility (wahn).

**Key Words:** Reputation, Determinism and Wahn, Deterministic and Debility Reputation, Practical Reputation, Ancient's Reputation.

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## **Liquidation or Non-Dissolution of Contracts of Trust as a Result of Abuse or Dissipation <sup>5</sup>**

**Reza Sokuti Nasimi (Ph.D) <sup>6</sup>**

**Khatijeh Naghizadeh <sup>7</sup>**

### **Abstract**

The first principle in Islamic law is the liability of the owner of another person's occupied property, but the lawyer and legislator in cases such as trust contracts deviate from this principle and consider the owner of the other person's occupied property as a trust one, and does not consider the owner as the sponsor of the deficit or perishing of the owner of the other person's occupied property. But this is absolutely not predicted and in the case of committing abuses or dissipation, he has provided for absolute liability. The main issue is that what effects does the change of the condition of trust must possess of the owner will have on the legal status of these contracts? In other words, will the trust contracts be destroyed by the commission of injustice or dissipation of contracts, or the commit of a fault by the trustworthy one has no effects in the states of such kinds of contracts?

The purpose of trust contracts in this study is including trust and permitting contracts, and including the pure trust contract and consequential trust, too. There are differences in the ideas among jurists and lawyers in this issue, especially in the deposit contract which has the nature and requirements for loan. Some believe that the main requirement of the deposit is trusteeship. Therefore, the loss of trust, the contract is invalidated, too, but some others do not see any conflict between permission and liability and believe to the deposit survival in a secured form. And according to this, we must say, based on this issue that, abuses or dissipation destroy the description of deposit, but permission is still remained and we can not consider the fault as the cause of the permission decline. Therefore, the continuation of the trust contract is preferable. And according to the principle of the stability of the previous sentence, in a doubtful condition in the remaining or dissolution of the trust contract by committing abuses or dissipation, can be considered in the strengthening of the above-mentioned issue. In other trust contract, because their essence is something out of the trust contract, it would not result in termination, and in some cases it can cause the right to terminate.

**Key words:** Injustice, Dissipation, Permission, Loan, Liquidation.

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1. This article is taken from the thesis of an M.A. degree titled in "A comparative study of violence and extremism and accept it in rights of Iran and Egypt. " which was defended in 12/11/93 in Tabriz University.
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# **Developmental Crime Prevention: Legal and Juridical Analyses of Iran and England**

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**Mohammad Reza Shadmanfar**<sup>10</sup>

## **Abstract**

In a crime policy based on scientific doctrines, how to deal with children and adolescents' conflicts is different from the delinquencies committed by adults. Detection of crime and deviance, and the attempts to reduce the risk factors in the development of children build the basis for developmental crime prevention. Such prevention requires a comprehensive and systematic plan in collaboration with organizations involved in matters related to children and adolescents. On the other hand, jurisprudential criminological doctrines imply that children and adolescents are the most vulnerable parts of a society in terms of physical, psychological, and social aspects. That is one of the main reasons that the world's lawmakers have realized the importance of those age categories and attempted to adopt supportive mechanisms and measures.

Employing society-compatible institutions, strengthening the mechanisms of self-control, person, family, and school oriented support programs, taking advantage of the economic, cultural and social opportunities in order to create the necessary infrastructure are all considered essential to preventing the tendency of children and adolescents to delinquency. The aim of the present study is to investigate growth-oriented prevention based on juridical teachings and crime policies in Iran and in UK.

**Key Words:** Early Intervention, Juridical Doctrines, Criminal Policy, Self-regulation

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## Performing Commitment by the Third Party

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### **Abstract**

By the personal intervention of the third party (other than the indebted) in performing a commitment, a new process will begin that is not out of the following three conditions. One is that the payment is “forcible” according to the legal ruling as is partially accepted by some internal regulations like insurance, business, social security, registration, civil law and civil responsibility. The second is that according to the agreement and compromise between the creditor and the third party, a special kind of deputy and succession is created for the payer and this is known as “deputy or payment” entity in the law of European countries which is devised and endorsed by legislators. However, when the third party repays the debt of the indebted just because of the creditor’s permission, or because of moral principles, or out of obligation, or to prevent a loss, the reference is done not on the basis of deputy, but on the basis of demanding the compensation of the paid amount. This is called “the personal recourse”. Unlike the previous conditions, because the main debt has been annulled, the guarantees and the collaterals are annulled too and will not be transferred. What is necessary for a person’s recourse is the third party’s lack of freewill in donation. In this paper, the attempt is to show that the permission despite the emphasis on the epilogue of the Article 267 of the civil law is not anything except the legal jurisdiction on the lack of freewill of the third party’s actions, Therefore, other principles have been formed in the judgmental procedures and legal doctrines for the justification of the recourse.

**Key words:** Performing Commitment, Third Party, Deputy, Freewill, Recourse

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